

GANGES TOWNSHIP

ALLEGAN COUNTY, MICHIGAN

EMERGENCY SERVICES COST RECOVERY ORDINANCE

ORDINANCE NO. 44

Adopted: May 12, 2009

Effective: June 20, 2009

An ordinance to protect the public health, safety and general welfare of persons and property within Ganges Township through the assessment and recovery of the expenses incurred in providing emergency assistance in some situations, to repeal any ordinances or parts of ordinances in conflict therewith, and to provide an effective date of this ordinance.

THE TOWNSHIP OF GANGES, COUNTY OF ALLEGAN, STATE OF MICHIGAN,
ORDAINS:

SECTION I

NAME.

This Ordinance shall be known as the Ganges Township Emergency Services Cost Recovery Ordinance.

SECTION II

PURPOSE

Ganges Township hereby finds that in order to protect the Township and its general populace from extraordinary costs associated with providing for fire fighting, rescue, and emergency medical services within the Township limits, it has become necessary to charge certain costs for providing these services. The Township finds that this legislation is necessary to fairly allocate the costs among those responsible for them; to establish a policy and set forth the methods by which it may recover costs incurred in making emergency responses and providing such response services; and to provide for the health, safety and welfare of its residents.

SECTION III

DEFINITIONS

Unless the context explicitly indicates otherwise, the meaning of the terms used in this Ordinance shall be as follows:

- (a) The Township. “The Township” refers to Ganges Township, County of Allegan, State of Michigan, only.
- (b) Assessable costs. “Assessable costs” means the direct and reasonable costs incurred in connection with a response to a public safety or fire emergency incident within the Township. These costs include all salaries, wages, or fringe benefits of the Township personnel responding to the incident; salaries, wages, or fringe benefits of the Township personnel engaged in the investigation, supervision and report preparation regarding the incident; all salaries, wages, or fringe benefits of the personnel of assisting governmental agencies or any other private or public entities operating at the request, direction, or on behalf of the Township in response to the incident; salaries, wages, or fringe benefits of the personnel of the Ganges Township Fire Department (“Fire Department”); and all costs connected with the administration of the incident relating to any prosecution of the person(s) responsible, including those relating to the production and appearances of any witnesses. Additional costs may include, but are not limited to, the rental or leasing of equipment for a specific response, replacement of equipment which is destroyed or contaminated in the response, laboratory costs and equipment, medical expenses incurred as a result of response activities, and any legal expenses that may be incurred as a result of an emergency response including efforts to recover expenses pursuant to this Ordinance.
- (c) Emergency assistance. “Emergency assistance” means any response by medical, public safety, fire or civil defense services to an emergency incident.
- (d) Emergency incident. “Emergency incidents” include the following:
 - (1) excessive requests for emergency assistance;
 - (2) a false alarm;
 - (3) a hazardous material incident or emergency;
 - (4) an illegal fire;
 - (5) threats of harm;
 - (6) a structure demolition or utility line failure;

- (7) water rescue attempts; or
 - (8) any other incident where emergency medical, public safety, fire or civil defense services are necessary.
- (e) Excessive request for emergency assistance. "Excessive request" means any request for emergency assistance made for a particular location or premises if emergency assistance has been provided to that location or premises more than five (5) times in the preceding thirty (30) days.
- (f) False alarm. "False alarm" means the intentional or non-intentional activation of an automated or manual device which was designed to request or summon emergency assistance when there was no need for emergency assistance, and any request for emergency assistance when the requesting person or entity knew or should have known that there was no actual need for such assistance. The determination that there was no actual need for emergency assistance shall be made by the Chief of the Fire Department or by the most senior official of the Fire Department responding to the false alarm. A false alarm shall not include any response to a request for emergency assistance which was caused by an act of God.
- (g) Hazardous materials. "Hazardous materials" means any explosive, pyrotechnic, compressed gas, flammable liquid, flammable solid, combustible liquid, oxidizing material, poisonous gas, poisonous liquid, poisonous solid, etiological material, radioactive material, corrosive material or liquefied petroleum gas and also includes, but is not limited to, any of the following:
- (1) Any material listed in the list of toxic pollutants found in 40 CFR..401.15, *et seq.*, as amended, or under any other federal law or regulations;
 - (2) Any material regulated as a class A or class B explosive by the United States Department of Transportation, pursuant to 49 CFR 173.5, as amended, or under any other federal law or regulations;
 - (3) Any flammable liquid or solid regulated by the United States Department of Transportation, pursuant to 49 CFR 171.1, *et seq.*, as amended, or under any other federal law or regulations;
 - (4) Any material designated as a hazardous material by the Secretary of the United States Department of Transportation through regulations found at 49 CFR..171.1, *et seq.*, as amended, or under any other federal law or regulations;

- (5) Any material deemed a “hazardous substance” as defined by 1994 PA 451, Part 207, Subsection 20101(n), MCL. 324.20101(n), as amended, or under any other Michigan law or regulations;
 - (6) Any material designed a hazardous material by state or federal law or regulations;
 - (7) Any hazardous chemical substance or mixture with respect to which the Administrator of the Environmental Protection Agency has taken action pursuant to section 7 of the Toxic Substance Control Act, as amended or subsequently restated; and
 - (8) Any otherwise non-hazardous material which becomes a potential hazard to vehicular or pedestrian traffic.
- (h) Hazardous material incident or emergency. “Hazardous material incident or emergency” means any occurrence, incident, activity, accident or emergency where a release of hazardous materials occurs or is reasonably imminent, as determined by the Chief of the Fire Department or the most senior official of the Fire Department responding to the incident.
- (i) Illegal fire. “Illegal fire” means a fire set or determined to have been set in violation of a federal, state or local law and shall include an arson fire and a fire set in violation of a “no burning” ban or order. An illegal fire does not include a fire caused by an act of God.
- (j) Release. “Release” means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping or disposing into the environment, including but not limited to the air, soil, groundwater and surface water.
- (k) Responsible party. “Responsible party” means any individual, firm, corporation, association, partnership, government entity or other entity responsible for requesting emergency assistance; or any owner, tenant, occupant or party in control of real and personal property from which, onto which or related to which there is a request for emergency incident or assistance; and their heirs, estates, successors and assigns.
- (l) Structure demolition. “Structure demolition” means the tearing down of a structure damaged by fire which must in the opinion of the Chief of the Fire Department or the most senior official of the Fire Department responding to the incident be promptly demolished following the fire to protect public safety.

- (m) Threat of harm. "Threat of harm" means the verbal or written threat of physical harm to oneself, another, or another's property which if carried out would be a violation of federal, state or local law.
- (n) Utility line failure. "Utility line failure" means the disabling of any transmission or service line, cable, conduit, pipeline, wire or the like used to provide, collect or transport electricity, natural gas, communication or electronic signals, or water, sanitary or storm sewage if the owner or party responsible for the maintenance of such utility line does not respond within one (1) hour to a request to repair or correct such failure.
- (o) Water Rescue. "Water rescue" means any emergency assistance on a body of water where emergency medical, public safety, police, fire or civil defense services are necessary. Bodies of water include rivers, lakes, streams, impoundments, estuaries, springs, wells, or other collectors/ collections of water.

SECTION IV

TOWNSHIP'S ASSESSABLE COSTS

- (a) The Township may recover all of its assessable costs incurred in connection with any emergency assistance provided within its boundaries from any or all responsible parties jointly and severally.
- (b) The Township Supervisor or, in the Supervisor's absence, the Chief of the Fire Department shall determine the Township's total assessable costs and shall in such emergency incidents determine whether to assess any, all or part of such costs against any of the responsible parties. In making such determinations, the following shall be considered:
 - (1) total assessable costs:
 - (2) any risk the incident imposed on the Township, its residents and their property;
 - (3) the risk of injury or damage to persons or property;
 - (4) any evacuation required because of the incident;
 - (5) any unusual or extraordinary use of the Township personnel or equipment; and/ or
 - (6) any damage to the environment.

- (c) After the consideration of the factors listed in (b) immediately above, the Township Supervisor or the Chief of the Fire Department may allocate assessable costs among and between responsible parties, including allocating all or some of such costs jointly and severally against more than one responsible party regardless of whether a responsible party has other legal liability or is legally at fault.
- (d) Whether the Township Supervisor or the Chief of the Fire Department determines to assess all, part or none of the assessable costs against a responsible party, such determination shall not in any way limit or extinguish the liability of the responsible party to the Township or any other person, corporation, partnership, government entity or any other entity.

SECTION V

BILLING AND COLLECTION OF ASSESSABLE COSTS

After a determination is made to assess assessable costs against a responsible party, an itemized invoice shall be sent to the responsible party at the party's last known address. Such invoice shall be due and payable within thirty (30) days of the date of mailing and any amounts unpaid after such date shall bear a late payment fee equal to one percent (1%) per month or fraction thereof that the amount due and any previously imposed late payment fee remain unpaid. If a responsible party shall appeal assessable costs pursuant to Section 7 hereof, such costs, if upheld, in whole or in part, shall be due and payable thirty (30) days from the date of determination of the appeal and any late payment fees shall apply thereafter.

SECTION VI

PROCEDURE FOR APPEALING ASSESSABLE COSTS

- (a) Any responsible party who receives an invoice for assessable costs shall have an opportunity to meet with the Township. The initial meeting shall be with the Township Supervisor or the Chief of the Fire Department, to request a modification of assessable costs. The responsible party shall request in writing such a meeting within seven (7) calendar days of the date of the invoice assessing the assessable costs.
- (b) If after this initial meeting any responsible party is still not satisfied, the responsible party may request an opportunity to appear before the Township Board to further request a modification of assessable costs. A responsible party who desires to appear before the Township Board must have had an initial meeting as provided above and then shall make a written request to appear before the Township Board within seven (7) calendar days of the date of this initial

meeting. Upon receipt of such request, the responsible party will be put on the agenda of the next regularly scheduled Township Board meeting.

- (c) Any filed request to appear shall specifically identify and explain all reasons why the responsible party believes the assessed costs should be modified. Any reason, basis or argument for modification of assessable costs not set forth in the request to appear shall be deemed waived by the responsible party. Failure to timely file a written request to appear shall constitute a waiver of any argument the responsible party may have had that the responsible party is not liable for the assessable costs invoiced. After a responsible party has been given an opportunity to appear before it, the Township Board shall promptly determine whether to confirm, modify or void the payment of assessable costs invoiced.

SECTION VII

ASSESSABLE COSTS A LIEN UPON PROPERTY

Costs assessed against a responsible party not paid when due, including late fees, shall constitute a lien upon the real property of the responsible party in the Township, from which, upon which or related to which the emergency incident occurred. Such lien shall be of the same character and effect as the lien for Township real property taxes and shall include accrued interest and penalties. The Township Treasurer shall, prior to March 1 of each year, certify to the Township Assessor the fact that such assessable costs are delinquent and unpaid. The Township Assessor shall then enter the delinquent amount on the next general ad valorem tax roll as a charge against the affected property, and the lien thereon shall be enforced in the same manner as provided and allowed by law for delinquent and unpaid real property taxes.

SECTION VIII

OTHER REMEDIES

In addition to the remedy set forth in this Ordinance, the Township shall be entitled to pursue any other remedy or may institute any appropriate action or proceeding in a court of competent jurisdiction as permitted by law to collect assessable costs from a responsible party.

SECTION IX

NO LIMITATION OF LIABILITY

The recovery of assessable costs pursuant hereto does not limit the liability of a responsible party under applicable local, state or federal law.

SECTION X

SEVERABILITY

Should any provision or part of this Ordinance be declared by a court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity or enforceability of any other provision or part, which shall remain in full force and effect.

SECTION XI

ADMINISTRATIVE LIABILITY

No officer, agent or employee of the Township, or a member of the Township Board, shall be personally liable for any damage that accrue to any responsible party or any other person as a result of any act, decision, or other consequence or occurrence arising out of a discharge of duties and responsibilities pursuant to this Ordinance.

SECTION XII

REPEAL

All ordinances or their parts which are in conflict in whole or in part with any of the provisions of this Ordinance as of its effective date are repealed to the extent of such conflict, except the terms defined in this Ordinance for purposes of interpretation, administration and enforcement of this Ordinance will in no manner repeal, modify or otherwise change the definition of any such terms as used in other Township ordinances.

SECTION XIII

EFFECTIVE DATE

This Ordinance was approved and adopted by the Township Board of Ganges Township, Allegan County, Michigan, at a regular meeting held on May 12, 2009. This Ordinance is ordered to take effect 30 days after publication in the The Allegan County News, a newspaper with general circulation in the Township.

John Hebert,
Township Supervisor

Cindy Yonkers,
Township Clerk

RB090476

CERTIFICATE

I, Cindy Yonkers, the Clerk for the Township of Ganges, Allegan County, Michigan, certify that the foregoing Ganges Township Emergency Services Cost Recovery Ordinance was adopted at a regular meeting of the Ganges Township Board of Trustees held on May 12, 2009.

The following members of the Township Board were present at that meeting:

Looman, Yonkers, Hebert, Reimink, Hutchins and the following members of the Township Board were absent: (NONE). The Ordinance was adopted by the Township Board with members of the Township Board Looman, Yonkers, Reimink, Hutchins, Hebert voting in favor and members of the Township Board (NONE) voting in opposition. A summary of the Ordinance was published in The Allegan County News on May 21, 2009.

Cindy Yonkers
Ganges Township Clerk

RB090476

